

DANIEL D. WYLES

IBLA 82-493

Decided June 10, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application NM 46036.

Affirmed.

1. Evidence: Presumptions -- Oil and Gas Leases: Applications: Filing

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Filing

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith by neglecting to include a list of clients' names and addresses, the application must be rejected.

APPEARANCES: Daniel D. Wyles, pro se; John H. Harrington, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Daniel D. Wyles appeals the January 14, 1982, decision by New Mexico State Office, Bureau of Land Management (BLM), which rejected his simultaneous oil and gas lease application NM 46036, which was given first priority

for parcel No. NM 473 in the May 1981 simultaneous leasing program, because although a copy of the agreement between Wyles and his agent, Petroleum Leasing Service, Inc. (PLS), was filed as required by 43 CFR 3102.2-6(b), no list of clients' names and addresses was attached. The application was signed by Valarie Gerhold, agent for PLS.

Appellant admits he used PLS as his filing agent and submits affidavits from Valarie Gerhold that she had completed the application of Wyles for parcel No. NM 473 and had completed and mailed the appropriate statement of authority authorizing the agency, the agency agreement, and the lists of customers' names and addresses to BLM on or before May 30, 1981; and from Gypsy Kemp, president of PSL, that Valarie Gerhold was the employee of PLS having responsibility for preparation and mailing of the statements of authorization, agency agreements, and all other documents required by 43 CFR 3102.2-6 to the appropriate BLM offices, and that to the best of her information and knowledge Gerhold did mail the required instruments to the New Mexico State Office on or about May 30, 1981.

Counsel for BLM states that BLM has diligently searched its files and records, and has been unable to locate the instruments stated in the affidavit of Gerhold. Counsel cites Herman Piltz, 61 IBLA 113 (1981), in support of the proposition that although appellant asserts the required instruments were mailed to BLM, BLM has no record of their receipt. There is a legal presumption of regularity which attends the official acts of public officers in the proper discharge of their official duties. Hence it is presumed that the BLM employees have properly discharged their duties and have not lost or mislaid any legally significant documents submitted for filing in that office.

The regulation, 43 CFR 3102.2-6(b), reads as follows:

Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with Subpart 3112 of this title.

The decision of BLM stated that it checked its records and could not find that PLS has submitted a list of its clients' names and addresses as required by 43 CFR 3102.2-6(b). Nor was there any attachment with the application of Wyles which could have satisfied the alternative requirement set out in 43 CFR 3102.2-6(b).

[1] As the Board held in Bernard S. Storper, 60 IBLA 67 (1981):

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly

mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

[2] The sound and proper running of the simultaneous oil and gas leasing system necessitates that strict compliance with the provisions of 43 CFR 3102.2-6 be maintained. Any latitude allowed the first priority applicant to correct a deficiency would impinge upon the rights of the applicant having second priority. Ballard E. Spencer Trust, Inc., 18 IBLA 256 (1974), aff'd, 544 F.2d 1067 (10th Cir. 1976). Since appellant and his agent did not comply with the requirements in 43 CFR 3102.2-6, his application was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

